## House of Representatives



General Assembly

File No. 197

February Session, 2022

Substitute House Bill No. 5222

House of Representatives, March 30, 2022

The Committee on General Law reported through REP. D'AGOSTINO of the 91st Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

### AN ACT CONCERNING PAID SOLICITORS OF CHARITABLE FUNDS AND CHARITABLE ORGANIZATION TRANSPARENCY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- Section 1. Section 21a-190f of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):
  - (a) No person shall act as a paid solicitor unless such person has first registered with the department. Registration shall be in a form prescribed by the commissioner, shall be certified by the paid solicitor as true and correct to the best of the solicitor's knowledge and shall be accompanied by a fee in the amount of five hundred dollars. The application shall contain such information as the department shall require. Each registration shall be valid for one year and may be renewed for additional one-year periods.
- 11 (b) An applicant for registration or for a renewal of registration as a 12 paid solicitor shall, at the time of making such application, file with and 13 have approved by the department a bond in a form prescribed by the 14 commissioner, in which the applicant shall be the principal obligor in 15 the sum of twenty thousand dollars, with one or more responsible

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16 sureties whose liability in the aggregate as such sureties shall be no less 17 than such sum. The paid solicitor shall maintain the bond in effect as 18 long as the registration is in effect. The bond shall run to the state and 19 to any person who may have a cause of action against the principal 20 obligor of the bond for any liabilities resulting from the obligor's 21 conduct of any activities subject to sections 21a-190a to 21a-190l, 22 inclusive, as amended by this act, or arising out of a violation of said 23 sections or any regulation adopted pursuant to said sections.

(c) No less than [twenty days] one business day prior to the commencement of each solicitation campaign, a paid solicitor shall file with the department a copy of the contract described in subsection (d) of this section and shall complete a solicitation notice in a form prescribed by the commissioner. A solicitation notice shall be certified by the paid solicitor as true and correct to the best of the solicitor's knowledge and shall include a description of the solicitation event or campaign, the location and telephone number from which the solicitation is to be conducted, the names and residence addresses of all employees, agents or other persons however styled who are to solicit during such campaign and the account number and location of all bank accounts where receipts from such campaign are to be deposited. Copies of campaign solicitation literature, including the text of any solicitation to be made orally, shall be submitted to the department.] The charitable organization on whose behalf the paid solicitor is acting shall certify that the solicitation notice and accompanying material are true and complete. [Prior to the commencement of such solicitation campaign, the commissioner shall publicize such solicitation by posting on the department's web site information describing the terms of the contract between the paid solicitor and the charitable organization, the dates of such solicitation campaign and the percentage of the raised funds to be retained by the paid solicitor. The commissioner may publicize such solicitation through any additional means commissioner deems appropriate.]

(d) A contract between a paid solicitor and a charitable organization shall be in writing, shall clearly state the respective obligations of the

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paid solicitor and the charitable organization and shall state the minimum amount that the charitable organization shall receive as a result of the solicitation campaign, which minimum amount shall be stated as a percentage of the gross revenue. Such minimum amount shall not include any amount that the charitable organization is to pay as expenses of the solicitation campaign.

- (e) A paid solicitor shall, prior to orally requesting a contribution, and at the same time at which a written request for a contribution is made, clearly and conspicuously disclose at the point of solicitation such solicitor's name as on file with the department [,] and the fact that such solicitor is a paid solicitor. [and the percentage of the gross revenue which the charitable organization shall receive as identified in subsection (d) of this section.]
- (f) A paid solicitor shall, in the case of a solicitation campaign conducted orally, whether by telephone or otherwise, send a written confirmation to each person who has pledged to contribute, no more than five days after such person has been solicited, which confirmation shall include a clear and conspicuous disclosure of the information required by subsection (e) of this section.
  - (g) A paid solicitor shall not represent that any part of the contributions received will be given or donated to any charitable organization unless such organization has consented in writing to the use of its name, prior to the solicitation. Such written consent, if given, shall be signed by two authorized officers, directors or trustees of the charitable organization.
  - (h) No paid solicitor may represent that tickets to an event are to be donated for use by another, unless the paid solicitor has first obtained a commitment, in writing, from a charitable organization stating that it will accept donated tickets and specifying the number of tickets which it is willing to accept and provided no more contributions for donated tickets shall be solicited than the number of ticket commitments received from the charitable organization.

(i) A paid solicitor shall require any person such solicitor directly or indirectly employs, procures or engages to solicit to comply with the provisions of subsections (e) to (h), inclusive, of this section.

- (j) A paid solicitor shall file a financial report for the campaign with the department no more than ninety days after a solicitation campaign has been completed, and on the anniversary of the commencement of any solicitation campaign which lasts more than one year, in a form prescribed by the commissioner. The financial report shall include gross revenue and an itemization of all expenditures incurred. The report shall be completed on a form prescribed by the department. An authorized official of the paid solicitor and two authorized officials of the charitable organization shall certify that such report is true and complete to the best of their knowledge. The information contained in such report shall be available to the public.
- (k) A paid solicitor shall maintain during each solicitation campaign and for not less than three years after the completion of each such campaign the following records: [, which shall be available to the department for inspection upon request:] (1) The name and address of each contributor, if known to the paid solicitor, and the date and amount of the contribution; [, provided the department shall not disclose this information except to the extent necessary for investigative or law enforcement purposes;] (2) the name and residence of each employee, agent or other person involved in the solicitation; and (3) records of all income received and expenses incurred in the course of the solicitation campaign. The paid solicitor shall make the records required under subdivisions (2) and (3) of this subsection, as well as records containing the dates and amounts described in subdivision (1) of this subsection, available to the department for inspection upon request.
- (l) If a paid solicitor sells tickets to an event and represents that tickets will be donated for use by another, the paid solicitor shall maintain, for not less than three years after the completion of such event, the following records, which shall be available to the department for inspection upon request: (1) The name and address of contributors

donating tickets and the number of tickets donated by each contributor; and (2) the name and address of all organizations receiving donated

- tickets for use by others, including the number of tickets received by
- 118 each organization.
- 119 (m) All funds collected by the paid solicitor shall be deposited in a 120 bank account. The bank account shall be in the name of the charitable 121 organization with whom the paid solicitor has contracted and the 122 charitable organization shall have sole or joint control of the account.
- (n) Any material change in any information filed with the department pursuant to this section shall be reported in writing or electronically by the paid solicitor to the department not more than seven days after such change occurs.
- 127 (o) No person may act as a paid solicitor if such person, any officer or 128 director thereof, any person with a controlling interest therein, or any 129 person the paid solicitor employs, engages or procures to solicit for 130 compensation, has been convicted by a court of any state or the United 131 States of any felony, or of any misdemeanor involving dishonesty or 132 arising from the conduct of a solicitation for a charitable organization or 133 purpose. Any denial, suspension or revocation of the registration of a 134 paid solicitor based on a violation of this subsection shall be made in 135 accordance with the provisions of section 46a-80.
- Sec. 2. Section 21a-190a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2023*):
- As used in <u>this section and</u> sections [21a-190a] <u>21a-190b</u> to 21a-190*l*, inclusive, as amended by this act:
  - (1) "Charitable organization" means any person who is, or holds [himself] <u>oneself</u> out to be, established for <u>(A)</u> any [benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic or eleemosynary] <u>charitable</u> purpose, or [for] <u>(B)</u> the benefit of <u>firefighters</u>, law enforcement officers [, firefighters] or other persons who protect the

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- 146 public safety.
- 147 (2) "Charitable purpose" means any benevolent, civic, educational,
- 148 <u>eleemosynary</u>, <u>environmental conservation</u>, <u>humane</u>, <u>patriotic</u>,
- philanthropic, public health, scientific, social advocacy or social welfare
- 150 <u>objective.</u>
- 151 (3) "Charitable sales promotion" means an advertising or sales
- 152 campaign, conducted by a commercial coventurer, which represents
- that the purchase or use of goods or services offered by the commercial
- 154 <u>coventurer are to benefit a charitable organization or charitable purpose.</u>
- 155 (4) "Commercial coventurer" means a person who (A) for profit, is
- 156 primarily and regularly engaged in trade or commerce in this state other
- than in connection with the raising of funds for charitable organizations
- or charitable purposes, and (B) conducts a charitable sales promotion.
- 159 (5) "Commissioner" means the Commissioner of Consumer
- 160 Protection.
- 161 (6) (A) "Contribution" means the grant, pledge or promise of credit,
- 162 financial assistance, money, property or other thing of any kind or value
- in response to a solicitation.
- (B) "Contribution" does not include bona fide assessments, dues or
- 165 fees paid by members, provided membership is not conferred solely as
- 166 consideration for making a contribution in response to a solicitation.
- (7) "Department" means the Department of Consumer Protection.
- 168 (8) (A) "Fund-raising counsel" means a person who (i) is compensated
- to advise, consult, manage or plan with respect to the solicitation in this
- state of contributions by a charitable organization, (ii) does not solicit
- contributions, and (iii) does not directly or indirectly engage, employ or
- procure any person compensated to solicit contributions.
- 173 (B) "Fund-raising counsel" does not include a bona fide
- 174 nontemporary salaried employee or officer of a charitable organization.

(9) "Gross revenue" means income of any kind from all sources,
 including all amounts received as the result of any solicitation by a paid
 solicitor, without deduction of any costs or expenses.

- 178 (10) "Membership" means that which entitles a person to the honors, 179 privileges, professional standing or other direct benefit of the 180 organization and the rights to vote, elect officers and hold office in the 181 organization.
- (11) (A) "Paid solicitor" means a person who, for any consideration other than any nonmonetary gift of nominal value awarded to a volunteer solicitor as an incentive or token of appreciation, performs for a charitable organization any service in connection with which contributions are solicited by such person or by any person he or she directly or indirectly employs, engages or procures to solicit for such contributions.
- 189 <u>(B) "Paid solicitor" does not include a bona fide nontemporary</u> 190 <u>salaried employee or officer of a charitable organization.</u>
- 191 (12) "Parent organization" means that part of a charitable 192 organization which exercises control over and supervises the 193 expenditure and solicitation activities of one or more affiliates, branches 194 or chapters.
- [(2)] (13) "Person" means an individual, <u>association</u>, corporation, limited liability company, [association] <u>foundation</u>, partnership, trust [, foundation] or any other entity however styled.
  - [(3)] (14) "Solicit" and "solicitation" (A) mean any request directly or indirectly for [money,] credit, financial assistance, money, property [, financial assistance] or other thing of any kind or value on the plea or representation that such [money,] credit, financial assistance, money, property [, financial assistance] or other thing of any kind or value is to be used for a charitable purpose or benefit a charitable organization, [. "Solicit" and "solicitation" shall] and (B) include, but [shall] are not [be] limited to, the following methods of requesting or securing such

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206 [money,] credit, financial assistance, money, property [, financial 207 assistance] or other thing of value: [(A)] (i) Any oral or written request; 208 [(B)] (ii) any announcement to the press, over the radio or television or 209 by telephone or telegraph concerning an appeal or campaign by or for 210 any charitable organization or charitable purpose; [(C)] (iii) the 211 circulation, distribution, [circulation,] posting or publishing of any 212 handbill, written advertisement or other publication; [(D)] and (iv) the 213 offer or sale of, [offer] or attempt to sell, any advertisement, advertising 214 space, book, candy, card, [tag,] cookies, coupon, device, flower, 215 magazine, membership, merchandise, subscription, [flower] tag, ticket 216 [, candy, cookies] or other tangible item in connection with an appeal 217 made for any charitable organization or charitable purpose, or where 218 the name of any charitable organization is used or referred to in any 219 such appeal as an inducement or reason for making any such sale [,] or 220 when or where in connection with any such sale, any statement is made 221 that the whole or any part of the proceeds from any such sale is to be 222 used for any charitable purpose or benefit any charitable organization. 223 A solicitation shall be deemed to have taken place whether or not the 224 person making the [same] solicitation receives any contribution.

- [(4) "Charitable purpose" means any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic or eleemosynary objective.
  - (5) "Contribution" means the grant, promise or pledge of money, credit, property, financial assistance or other thing of any kind or value in response to a solicitation. "Contribution" shall not include bona fide fees, dues or assessments paid by members, provided membership is not conferred solely as consideration for making a contribution in response to a solicitation.
  - (6) "Fund-raising counsel" means a person who for compensation plans, manages, advises or consults with respect to the solicitation in this state of contributions by a charitable organization, but who does not solicit contributions and who does not directly or indirectly employ,

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procure or engage any person compensated to solicit contributions. A bona fide nontemporary salaried officer or employee of a charitable organization shall not be deemed to be a fund-raising counsel.

- (7) "Paid solicitor" means a person who for any consideration, other than any nonmonetary gift of nominal value awarded to a volunteer solicitor as an incentive or token of appreciation, performs for a charitable organization any service in connection with which contributions are solicited by such person or by any person he directly or indirectly employs, procures or engages to solicit for such compensation. A bona fide nontemporary salaried officer or employee of a charitable organization shall not be deemed to be a paid solicitor.
- (8) "Commercial coventurer" means a person who for profit is regularly and primarily engaged in trade or commerce in this state other than in connection with the raising of funds for charitable organizations or purposes and who conducts a charitable sales promotion.
- (9) "Charitable sales promotion" means an advertising or sales campaign, conducted by a commercial coventurer, which represents that the purchase or use of goods or services offered by the commercial coventurer are to benefit a charitable organization or purpose.
- 258 (10) "Department" means the Department of Consumer Protection.
- 259 (11) "Commissioner" means the Commissioner of Consumer 260 Protection.
- (12) "Membership" means that which entitles a person to the privileges, professional standing, honors or other direct benefit of the organization and the rights to vote, elect officers and hold office in the organization.
- 265 (13) "Parent organization" means that part of a charitable 266 organization which supervises and exercises control over the 267 solicitation and expenditure activities of one or more chapters, branches 268 or affiliates.

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(14) "Gross revenue" means income of any kind from all sources, without deduction of any costs or expenses, including all amounts received as the result of any solicitation by a paid solicitor.]

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- Sec. 3. Section 21a-190b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2023*):
- (a) Every charitable organization not exempted by section 21a-190d shall annually register with the department prior to conducting any solicitation or prior to having any solicitation conducted on [its] such <u>charitable organization's</u> behalf by others. Application for registration shall be in a form prescribed by the commissioner and shall include a nonrefundable application fee of fifty dollars. Such application shall include: (1) A registration statement, (2) an annual financial report for such charitable organization for the preceding fiscal year that is prepared in accordance with the provisions of subsection (a) of section 21a-190c, as amended by this act, and (3) an audited financial statement as required by subsection (b) of section 21a-190c, as amended by this act. An authorized officer of the <u>charitable</u> organization shall certify that the statements therein are true and correct to the best of [their] such officer's knowledge. [A chapter, branch or] An affiliate, branch or chapter in this state of a registered parent organization shall not be required to register, provided the parent organization files a consolidated annual registration for itself and its [chapter, branch or] affiliate, branch or chapter. Each charitable organization shall annually renew [its] such charitable organization's registration not later than eleven months after the end of such <u>charitable</u> organization's fiscal year.
- (b) In the event the department determines that the application for registration does not contain the documents required in subsection (a) of this section or is not in accordance with the regulations adopted by the commissioner pursuant to this chapter, the department shall notify the charitable organization of such noncompliance not later than ten days after the department's receipt of such application for registration. Any such charitable organization may request a hearing on its noncompliant status in accordance with the provisions of chapter 54.

(c) In addition to the application fee required pursuant to subsection
(a) of this section, a charitable organization shall pay a late fee of twentyfive dollars for each month, or part thereof, that such application for
registration is late. The commissioner may, upon written request and for
good cause shown, waive or reduce any late fee under this section.

- (d) In the event that a charitable organization fails to register in accordance with the provisions of this section, [such] the charitable organization shall include in [its] such charitable organization's application for registration an annual financial report for each of the previous years in which such charitable organization was required to file an application for registration or an annual financial report.
- (e) Any charitable organization registered in accordance with this section on September 30, 2005, shall be deemed to be registered pursuant to this section until the last day of the fifth month after the close of the fiscal year in effect on September 30, 2005.
- (f) A charitable organization registered in accordance with this section shall (1) when engaging in solicitation, or upon request from any person, disclose the charitable organization's registration number, and (2) display the charitable organization's registration number in a conspicuous manner on (A) such charitable organization's Internet web site, and (B) any (i) printed advertisement, or (ii) advertisement on any Internet web site.
- Sec. 4. Section 21a-71 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2023*):
  - No person shall sell any food, drug or cosmetic, as defined by section 21a-92, at an auction, unless such person has notified the Commissioner of Consumer Protection, in writing, of such sale; provided this section shall not apply to the sale of food by any church, parent teacher association, charitable organization as defined [by subdivision (1) of] in section 21a-190a, as amended by this act, or any organization of any political party. Such notice shall be given at least seven days prior to such sale and said commissioner may inspect such food, drug or

cosmetic and prohibit the sale of the same if it is found to be unfit for human use. This section shall apply to the sale of unclaimed freight.

Sec. 5. Subsection (b) of section 21a-190c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) A charitable organization with gross revenue in [excess of] an amount that is (1) greater than five hundred thousand dollars but less than one million dollars in the year covered by the report shall include with [its] the charitable organization's financial statement an audit report or review report of a certified public accountant, or (2) at least one million dollars in the year covered by the report shall include with the charitable organization's financial statement an audit report of a certified public accountant. For purposes of this section, gross revenue shall not include grants or fees from government agencies or the revenue derived from funds held in trust for the benefit of the charitable organization. The commissioner may, upon written request and for good cause shown, waive the audit report or review report requirement [under] established in this subsection.

This act shall take effect as follows and shall amend the following		
sections:		
Section 1	from passage	21a-190f
Sec. 2	January 1, 2023	21a-190a
Sec. 3	January 1, 2023	21a-190b
Sec. 4	January 1, 2023	21a-71
Sec. 5	from passage	21a-190c(b)

### Statement of Legislative Commissioners:

In Section 2(1), "<u>such person</u>" was changed to "<u>oneself</u>", for clarity; and, in Section 5(b), "audit, <u>or review</u>, report" was changed to "audit report <u>or review report</u>", and "audit <u>or review</u> report" was changed to "audit report <u>or review report</u>", for clarity.

### **GL** Joint Favorable Subst.

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

### **OFA Fiscal Note**

State Impact: None

Municipal Impact: None

**Explanation** 

The bill makes various changes to charitable organizations resulting in no fiscal impact to the state.

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State Impact: None

**Municipal Impact:** None

### OLR Bill Analysis sHB 5222

# AN ACT CONCERNING PAID SOLICITORS OF CHARITABLE FUNDS AND CHARITABLE ORGANIZATION TRANSPARENCY. SUMMARY

This bill makes several changes in the Connecticut Solicitation of Charitable Funds Act, generally codifying recent caselaw that deemed certain provisions regulating paid solicitors unenforceable on constitutional grounds (see BACKGROUND). The bill also (1) requires charitable organizations to disclose their registration numbers when soliciting or upon request and (2) allows smaller registered charitable organizations to forgo a formal audit and instead obtain a financial review from a certified public accountant (CPA).

By law, the Solicitation of Charitable Funds Act requires charitable organizations that solicit money or support in Connecticut to register with the Department of Consumer Protection (DCP), unless they are exempt (e.g., religious and parent-teacher organizations, certain organizations that normally receive less than \$50,000 in contributions annually). Paid solicitors (and some fundraising counsel) are also required to register, post a bond, and file certain reports (CGS §§ 21a-190d to 21a-190f).

This bill also makes technical and conforming changes.

EFFECTIVE DATE: Upon passage, except certain technical changes are effective January 1, 2023.

#### PAID SOLICITORS

Regarding registered paid solicitors, the bill:

- reduces, from 20 days to one business day, the notice a solicitor must give to DCP before starting a campaign (i.e., by filing his or her contract and solicitation notice form);
- 2. eliminates the requirement that copies of the charitable campaign

solicitation literature, including the text of any proposed oral solicitations, be shared with DCP ahead of the campaign;

- 3. eliminates the requirement that a solicitor, before making an oral solicitation, disclose the percentage of the gross revenue that the organization will receive; and
- 4. correspondingly eliminates the requirement that a written confirmation of an oral pledge include information on the percentage of revenue the organization will receive.

Additionally, the bill eliminates the requirement that DCP publicize on its website the (1) terms of the contract between the solicitor and organization, (2) campaign dates, and (3) percentage of fundraising revenue the solicitor will keep. The bill also eliminates the DCP commissioner's authority to publicize this information elsewhere, as she deems appropriate.

The bill narrows the solicitation campaign information solicitors must provide to DCP upon request. Under the bill, while solicitors must still maintain a record of contributors' names and addresses (if known), they are no longer required to share this information with DCP. As under current law, solicitors must still provide DCP, if requested, information on the dates and amounts of contributions. Current law prohibits the department from disclosing this information, except if necessary for investigative or law enforcement purposes. The bill eliminates this restriction on DCP's authority to disclose contributor information.

### CHARITABLE ORGANIZATIONS

Regarding registered charitable organizations, the bill:

- 1. requires organizations, when soliciting or upon request, to disclose their DCP registration number;
- 2. requires organizations to display their DCP registration number conspicuously on their website and printed and internet advertisements; and

3. raises the threshold above which an organization must submit an audit report to DCP, while allowing smaller organizations to instead submit a CPA's financial "review report."

Currently, charitable organizations with more than \$500,000 in annual gross revenue must include a CPA's audit report in the annual financial report they submit as part of the DCP registration process. Under the bill, this is still a requirement for organizations with at least \$1 million in gross revenue, but organizations with gross revenues over \$500,000 and below \$1 million can instead include a CPA's financial review report.

### **BACKGROUND**

### Related Caselaw on Paid Solicitors

In 2021, the U.S. District Court for the District of Connecticut issued a preliminary injunction enjoining DCP from enforcing, on the grounds that they likely violated free speech rights, the Solicitation of Charitable Funds Act's requirements that solicitors:

- 1. give DCP 20 days' notice, and provide DCP copies of the text of any intended solicitation, before starting a campaign and
- 2. keep records of donors and donations for DCP to inspect.

Additionally, while the court found that the Act's requirement that solicitors disclose to prospective donors the percentage of a contribution that the charitable organization would receive did not appear to comport with the First Amendment and U.S. Supreme Court caselaw, it did not enjoin DCP from enforcing this requirement, as the department said that it had already stopped enforcing it (*Kissel v. Seagull*, 552 F. Supp. 3d 277).

### **COMMITTEE ACTION**

General Law Committee

Joint Favorable Substitute
Yea 18 Nay 0 (03/15/2022)